

ORIGINAL

8-28-02
4

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

OHIO CASUALTY GROUP, as Subrogee of
Eric Staub

Plaintiff

vs.

J&J INVESTMENT MANAGEMENT
COMPANY, AL BUDROW

Defendant and Third Party Plaintiff

vs.

RICHARD EDWARD WONDERS,
t/a WONDER GENERAL CONTRACTING

Third Party Defendant

No. 1:CV-01-785

CIVIL ACTION - LAW

Judge Kane

FILED
HARRISBURG, PA

AUG 26 2002

MARY E. DIANDREA CLERK
Per [Signature]
Deputy Clerk

PRE-TRIAL MEMORANDUM OF DEFENDANT RICHARD R. WONDERS
t/a WONDER GENERAL CONTRACTING

Date of Conference: August 29, 2002 10:00 a.m.

A. BASIS OF FEDERAL COURT JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. §1332. Third Party Defendant Richard Wonders is a resident of Pennsylvania.

B. SUMMARY OF FACTS

There was a fire on May 26, 2000. It has been determined that the fire originated at 213 N. Broad Street. This home was owned by J & J Investments. At the time of the fire, the property was vacant. Vandals broke into the home at 213 N. Broad Street and started a fire. The individuals have been charged and convicted of arson. As a result of the actions of the vandals, the fire spread to the

Staub' home which was insured with Ohio Casualty Group.

The claim against Third Party Defendant Wonders is that he was hired by J & J Investments to secure the property and/or remove certain debris from the property. The facts in this case clearly establish that Mr. Wonders was not hired by J & J Investment to perform the services. Furthermore, the facts also establish that Richard Wonders did not hire Al Budrow to perform these services for J & J Investments. The facts establish that Al Budrow was retained by J & J Investment to perform these services. Third Party Defendant Wonders was not a "middle man" in this transaction. Thus, Third Party Defendant Wonders has no liability for this matter.

C. UNDISPUTED FACTS

1. There was a fire on May 26, 2000 at 213 N. Broad Street.
2. The property at 213 N. Broad Street was owned by J & J Investments.
3. The fire which originated at 213 N. Broad Street was the result of an act of arson by vandals who broke into 213 N. Broad Street and intentionally started the fire with a flammable liquid.
4. The fire was investigated by Detective Troy Cromer of the York City Police Department.
5. Al Budrow was in the property after Richard Wonders and before the fire.

6. John Giambalvo is one of the principals of J & J Investment.
7. John Giambalvo told Detective Cromer that he had retained Al Budrow to clean up the premises. A copy of Mr. Giambalvo's statement to Detective Cromer is attached hereto as Exhibit 1.
8. Al Budrow has told Detective Cromer that he was the individual who was hired by J & J Investments to clean up the premises. A copy of his statement to Detective Cromer is attached hereto as Exhibit 2.
9. Al Budrow has given a deposition. He has testified that he was retained by John Giambalvo on behalf of J & J Investments. He also stated that Richard Wonders was not involved in this transaction. Richard Wonders was not the general contractor for this project. Pages 12 through 16 of Al Budrow's deposition transcript are attached hereto as Exhibit 3.

D. DAMAGES

This lawsuit involved the subrogation interest of Ohio Casualty. It does not involve the uninsured claim of Eric Staub. If Plaintiff presents an uninsured claim from Mr. Staub, then there is no diversity jurisdiction for this matter. Mr. Staub is a resident of Pennsylvania.

The claim simply involves the property damage sustained to the Staub' residence which was covered by the Ohio Casualty policy. See Plaintiff's Pre-Trial Conference Memorandum for a more specific list of damages.

E. WITNESSES

1. Detective Troy Cromer
2. John Giambalvo
3. Al Budrow
4. Richard Wonders

Third Party Defendant Wonders reserves the right to add or delete from this list of witnesses upon proper notice to the Court and other counsel.

F. EXPERT WITNESSES

Third Party Defendant Wonders will not need the services of an expert witness. If this should change, he will give proper notice to the Court and other counsel.

G. SPECIAL COMMENT

None at this time.

H. LEGAL ISSUES

1. Whether Third Party Defendant Wonders owed any duty in connection with the property at 213 N. Broad Street.
2. Whether Third Party Defendant Wonders breached any such duty.

I. STIPULATIONS

Third Party Defendant Wonders has no liability for this matter. It is specifically requested that the parties would stipulate to his dismissal.

J. NUMBER OF TRIAL DAYS

2 – 2½ days

K. OTHER MATTERS PERTINENT TO THE CASE

1. There are no companion federal lawsuits. There are two (2) similar lawsuits that are pending in State Court in York County, Pennsylvania.
2. Third Party Defendant Wonders is only a party to one of these lawsuits.

L. EXHIBITS

Third Party Defendant Wonders' Exhibits consist of:

1. Detective Cromer's report of his conversation with John Giambalvo.
2. Detective Cromer's report of his conversation with Al Budrow.
3. The entire investigative file from the York City Police Department.

M. SETTLEMENT

Undersigned counsel has advised his carrier of Local Rule 16.2 and his carrier will be available via telephone to respond to any settlement discussions.

N. VIDEOTAPE DEPOSITIONS

None at this time.

GRIFFITH, STRICKLER, LERMAN,
SOLYMOS & CALKINS

BY: 

MICHAEL B. SCHEIB, ESQUIRE

Attorney I.D. No. 63868

110 South Northern Way

York, Pennsylvania 17402

(717) 757-7602

Attorneys for Third Party Defendant

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CERTIFICATE OF SERVICE

AND NOW, this 21st day of August, 2002, I, Michael B. Scheib, Esquire, a member of the firm of GRIFFITH, STRICKLER, LERMAN, SOLYMOS & CALKINS, hereby certify that I have this date served a copy of the Pre-Trial Memorandum of Richard Wonders t/a Wonders General Contracting Claim, by United States Mail, addressed to the party or attorney of record as follows:

Martin A. Durkin, Jr., Esquire
Durkin & Abel
One Penn Center, Suite 1520
1617 John F. Kennedy Boulevard
Philadelphia, PA 19103

Ohio Casualty Group
c/o Hayes A. Hunt, Esq.
1900 Market Street
Philadelphia, PA 19103

Al Budrow
3979 Craig Avenue
Dover, PA 17315

GRIFFITH, STRICKLER, LERMAN,
SOLYMOS & CALKINS

BY: 

MICHAEL B. SCHEIB, ESQUIRE

Attorney I.D. No. 63868

110 South Northern Way

York, Pennsylvania 17402

(717) 757-7602

Attorneys for Defendant Wonders

SEP-05-01 03:56 PM MCA FIRE & EXP. INV. 717 1 2306

P.08

City of York Police Department SUPPLEMENT (Complaint Report) 50 West King Street York, Pennsylvania 17405 Phone (717) 848 - 1234				CASE NO. 	
				PAGE 1 OF 1	
CODE SECTION 0900-2	CRIME Arson	DATE CRIME REPORTED 05/26/2000	LOCATION 213 N. Broad Street		
VICTIM'S NAME - LAST, FIRST, MIDDLE (FIRM IF BUS.) Giambalvo, John		ADDRESS 213 Knob Creek Lane, York PA 17402	RESIDENCE	BUSINESS	PHONE (717)-840-1031

On 31 May 2000 at 1000 hrs. this officer conducted a neighborhood canvass of the 200 block N. Broad St. The interviews of victims and neighbors follows.

213 N. Broad Street. Owner: John W. Giambalvo
 213 Knob Creek Lane
 York, PA 17402 #840-1031

Mr. Giambalvo stated that his property has been vacant since around the end of January, beginning of February, 2000. He stated that he had to evict his previous tenants Louise Hudson and Joseph Funderberk. The eviction was due to unpaid rent and the destruction of his property. He stated that they had left a large amount of trash behind inside and outside on the property. He stated he had taken the tenants to District Justice Farrell's office for the unpaid rent and the eviction order. The order was filed on the 12 January 2000 at 1441 hrs. with Docket Number# LT-0000458-99 for a Total of \$1,532.50 to be paid by the defendants. Mr. Giambalvo stated that he had hired an Al Budrow of Dover, PA to clean up the property and restore it. He stated that due to his business he is unable to continuously check the property and had left the securing of the property to Al Budrow. He stated that he was unaware of the property being unsecured. He stated that he was aware of the trash inside and outside to the rear of the property. Mr. Giambalvo provided insurance information on the property.

Insurance Company: Farmer's Mutual
 Ins. Agent: Black, Davis & Shue/ Don Russell #755-7108
 Ins. Adjuster: Paul Zendonis #329-9564
 Policy #: F 306359, Expires 10/00

The property was insured for \$50,000 (no contents). This officer confirmed the information with Don Russell and he advised that there have been no policy changes since 5 September 1997. Mr. Giambalvo advised that the utilities to the property were disconnected. This officer contacted Columbia Gas of PA and spoke with a Susan in customer service. She advised that service was disconnected on the 8 March 2000 by the previous tenant, Joseph Funderberk. This officer also contacted GPU Energy and spoke with an Angela in customer service. She advised that service was disconnected on 8 March 2000 by the previous tenant, Joseph Funderberk.

This officer inquired to citations received by Mr. Giambalvo from the City of York in regards to codes violations. He stated that he received a letter from the Bureau of Permits & Health Licensing notifying him that he had 5 days to have the rubbish removed from the interior and exterior of the property. The letter was dated 10 May 2000 and stated that he would receive fines up to \$1,000 per day for each infraction. He stated on 12 May 2000 he received a citation from the same city department for violations of the York City Property Maintenance Code, section 305.1. Mr. Giambalvo stated that he was advised that other letters were sent but to a different address than his current residence. He stated that is why he hired Mr. Budrow, to clean up the property. He stated that he had cleaned up the back yard and was working on the inside of the property. Mr. Giambalvo could not provide any additional information. His property received severe fire damage to all three floors.

Patrol Division

Investigative Division

Records Division

INVESTIGATING OFFICER T. A. Cromer				RECORDING OFFICER Troy A. Cromer				NO. 198	DATE AND TIME 06/07/00 2347	ENTERED
FURTHER X YES				COPIES DETECTIVES DOMESTIC VIOLENCE UNIT				CR (LEAVE BLANK)		
ACTION NO TO JUVENILE PATROL										
X DISTATTNY OTHER				REVIEWED BY				DATE		
SOPO OTHER										

Exhibit A

SEP-05-01 03:56 PM MCA 1S FIRE & EXP. INV. 717 1 2386

P. 09

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On 31 May 2000 at 1000 hrs. this officer conducted a neighborhood canvass of the 200 block N. Broad St. The interviews of victims and neighbors follows.

213 N. Broad Street, Owner: John W. Giambalvo
 213 Knob Creek Lane
 York, PA 17402 #840-1031

This officer spoke with a Al Budrow of 3975 Craig Lane, Dover, PA 17315 #292-8012. Mr. Budrow is the man hired by Mr. John Giambalvo to clean up the property at 213 N. Broad Street. Mr. Budrow stated that he was hired approximately one month ago by the property owner to clean up the rubbish inside and outside, and to restore the property to a condition to be rented again. Mr. Budrow advised that the last time he was at the property was on Tuesday or Wednesday of the week of 21 May 2000. He stated that he had removed all the rubbish from the back yard and placed it inside the property on the first floor in the front room in bags. He stated that he had begun work on the interior and had removed all the rubbish from the second and third floors. He stated that the rubbish from those floors was placed into bags and put on the first floor in the front room. He stated that there was nothing on the second and third floors, that they were bare. He stated that he had placed a new lock on the front door and that it would only lock from the inside. He stated that the front door was locked and secured. He stated that he had used screws and screwed the rear screen door to the jam so that it could not be opened. Mr. Budrow advised that the rear door did not lock. In order to lock the door, he placed a wire around the door knob on the inside of the door. The wire ran out around the door between the door and jam and through an opening in the screen door. He then tied the wire around a piece of electrical conduit that ran up the wall. He stated that this was the only way to secure the rear door of the property. Mr. Budrow stated that he had paint brushes and one gallon of paint thinner, ¾ full, sitting on the south wall counter of the kitchen. He advised that on today's date when he boarded the property up from the fire that the paint brushes were still there but, the thinner was gone from inside the kitchen. The fire department advised that they did not remove anything from the kitchen the night of the fire. This officer and the investigators operating on the scene also did not remove anything from the kitchen. The kitchen had received minor fire damage, just smoke, heat and water. Evidence Sample #2 which was taken from the front room, middle of the room from the fire debris was labeled 1- piece Subfloor and Trash. This piece of evidence had a strong odor of a hydrocarbon based material i.e.: paint thinner and/or kerosene. This sample was sent to PSP Lab for chemical analysis for an accelerant. This piece of evidence that was mixed in with the trash/fire debris is now believed to be the paint thinner container. The sample was a white piece of plastic material melted with several pieces of trash adhered fast. Mr. Budrow advised that the container was white with an unknown label. He stated he purchased it in a local hardware store. Results from this sample have not yet been received. Mr. Budrow could not provide any more additional information.

Patrol Division

Investigative Division

Records Division

INVESTIGATING OFFICER T. A. Cromer				RECORDING OFFICER Troy A. Cromer		NO. 198	DATE AND TIME 06/07/00 2347	ENTERED
FURTHER ACTION	X YES	COPIES TO	DETECTIVES	DOMESTIC VIOLENCE UNIT	CR (LEAVE BLANK)			
	NO		JUVENILE	PATROL				
			X DIST.ATTY	OTHER	REVIEWED BY		DATE	
			SOUPD	OTHER				

Exhibit B

1 A. Again, please.

2 Q. How did you get paid for your work on painting
3 the second project that--

4 A. Check from Rich Wonders -- well, Wonders General
5 Contracting, not personally.

6 Q. How long did that work last?

7 A. That lasted some weeks. I don't remember the
8 total time frame of that.

9 Q. Did you talk to John Giambalvo during the course
10 of that project?

11 A. Yes.

12 Q. Again, about color schemes, but anything else
13 other than that?

14 A. Well, near the end of the project he asked me
15 about -- we talked about the Broad Street
16 property.

17 Q. Now we're talking about 213 North Broad Street?

18 A. I believe that's the correct address, yes.

19 Q. It took me a while to get there, but that's why
20 we're here. So the 213 North Broad Street, what
21 was the conversation you had with Mr. Giambalvo?

22 A. The conversation that I had with him about the
23 Broad Street property was having to do with the
24 fact that he needed maintenance done on the
25 exterior of the property immediately because of

Exhibit C

1 some health code things with the city; namely,
2 removal of debris and the cutting of the lawn.

3 Q. Do you remember what time period this was? Was
4 it in May of 2000? Was it in April of 2000, do
5 you remember?

6 A. It was the week prior to the fire.

7 Q. So do you know the fire to be on May 26th, 2000?

8 A. I believe that's correct.

9 Q. So it was about a week before that?

10 A. Yeah.

11 Q. So what did Mr. Giambalvo say about work that
12 needed to be done at the property?

13 A. Just that there were two phases that needed to
14 be done first and foremost and there was no
15 contract on this, just, you know, I need it done
16 immediately was the trash removal and the mowing
17 of the lawn.

18 Then secondarily there was interior work to
19 be done to the property to get it ready for
20 rehabilitation as it was currently vacant.
21 There again there was no contract, no set
22 figures or anything there either.

23 Q. Did Richard Wonders ever talk to you about the
24 work at 213 North Broad Street prior to you
25 going there?

1 A. Yes.

2 Q. What did he tell you about the work to be
3 performed at the property?

4 A. Prior to going there, he had informed me that
5 Mr. Giambalvo wanted some work done there, and
6 he wanted me to look at it to see if I was
7 interested in taking the project.

8 Q. Did he say anything else specifically about the
9 property other than that, other than you taking
10 a look at it?

11 A. He indicated that he was not interested in being
12 a general contractor on that job, if that's what
13 you're asking.

14 Q. He told you that?

15 A. Yeah, yeah.

16 Q. I'm just asking what else he said.

17 A. Yeah. He indicated that he was not interested
18 in being a general contractor on that job.

19 Q. Did he talk about Mr. Giambalvo's desire to
20 perform a remodeling project at the property?

21 A. Yes, he did.

22 Q. What did he say regarding the remodeling of the
23 property?

24 A. Just that Mr. Giambalvo had a price in mind of
25 what he could put into the property. I think it

1 was around, if I'm not mistaken, it was around
2 2,000, 2,500 that he was looking to spend and
3 could the work that would be needed be performed
4 for that amount.

5 Q. Did he tell you he had been to the property
6 prior to calling you?

7 A. Who he?

8 Q. Richard Wonders.

9 A. Had he told me that he was there prior to that?

10 Q. Yes.

11 A. No, he had not told me he was there prior to
12 that.

13 Q. What did he say about the remodeling job for
14 \$2,000? Was it specific about what work you
15 were going to perform?

16 A. No, no. It was unspecified. It was what was my
17 recommendation to Mr. Giambalvo.

18 Q. Did he tell you he was going to make a
19 recommendation to Mr. Giambalvo about the
20 remodeling work?

21 A. No, he did not.

22 Q. Again, this is about one week prior to the fire,
23 or was it before that?

24 A. Yes, I believe so.

25 Q. Well, that's--

1 A. To the best of my recollection.

2 Q. You had a conversation with Richard Wonders
3 about a week before the fire. Is that right?

4 A. Um-hum. It all transpired in a few days.

5 Q. And then I guess in a day or two did you have a
6 conversation with Mr. Giambalvo about performing
7 work at the property?

8 A. Yes.

9 Q. That's again within one week of the fire. Is
10 that right?

11 A. Yes.

12 Q. Did Richard Wonders say he was going to inspect
13 the property and see if he wanted to do the
14 remodeling work?

15 A. Did he tell me that, no.

16 Q. So at what point did he say he did not want to
17 be a general contractor of the project? Did he
18 just say that for no reason, or was it in
19 response to something?

20 A. Just basically no reason. We met at the
21 property. He handed me the key and said if
22 you're interested in this, you know, I'm too
23 busy to really deal with it.

24 Q. So you guys were at the property about a week
25 before the fire. Is that right?

UNITED STATES DISTRICT COURT
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OHIO CASUALTY GROUP, as Subrogee of	:	No. 1:CV-01-785
Eric Staub	:	
	:	
Plaintiff	:	
vs.	:	CIVIL ACTION - LAW
	:	
J&J INVESTMENT MANAGEMENT	:	
COMPANY, AL BUDROW	:	
Defendant and Third Party Plaintiff	:	Judge Kane
vs.	:	
RICHARD EDWARD WONDERS,	:	
t/a WONDER GENERAL CONTRACTING	:	
Third Party Defendant	:	

SPECIAL VERDICT SLIP

1. Was Defendant J & J Investments negligent?

Yes _____ No _____

IF YOU ANSWER QUESTION NO. 1 "YES", PROCEED TO QUESTION NO. 2.

IF YOU ANSWER QUESTION NO. 1 "NO", PROCEED TO QUESTION NO. 3.

2. Was Defendant J & J's negligence a substantial factor in causing Plaintiff's injury?

Yes _____ No _____

PROCEED TO QUESTION NO. 3.

3. Was Third Party Defendant Al Budrow negligent?

Yes _____ No _____

IF YOU ANSWER QUESTION NO. 3 "YES", PROCEED TO QUESTION NO.
4.

IF YOU ANSWER QUESTION NO. 3 "NO", PROCEED TO QUESTION NO. 5.

4. Was the negligence of Third Party Defendant Al Budrow a substantial factor in causing Plaintiff's injury?

Yes _____ No _____

PROCEED TO QUESTION NO. 5.

5. Was Third Party Defendant Richard Wonders negligent?

Yes _____ No _____

IF YOU ANSWER QUESTION NO. 5 "YES", PROCEED TO QUESTION NO. 6.

IF YOU ANSWER QUESTION NO. 5 "NO", PROCEED TO QUESTION NO. 7.

6. Was the negligence of Third Party Defendant Richard Wonders a substantial factor in causing Plaintiff's injury?

Yes _____ No _____

PROCEED TO QUESTION NO. 7.

7. Taking the combined negligence that was a substantial factor in causing Plaintiff's injury as one-hundred percent (100%), what percentage of that causal negligence was attributed to each party?

Percentage of causal negligence attributable to Defendant J & J Investments

(answer only if you have answered "Yes" to Questions 1 and 2).

_____ %

Percentage of causal negligence attributable to Third Party Defendant Al Budrow

(answer only if you have answered "Yes" to Questions 3 and 4).

_____ %

Percentage of causal negligence attributable to Third Party Defendant
Richard Wonders
(answer only if you have answered "Yes" to Questions 5 and 6).
_____ %

8. State the amount of damages, if any, sustained by Plaintiff Ohio Casualty as a result of the fire.

DATE

JURY FOREPERSON